

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**Endangered and Threatened Wildlife and Plants; Proposal To Determine *Callirhoe scabriuscula* (Texas Poppy-mallow) To Be an Endangered Species**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposal.

**SUMMARY:** The U.S. Fish and Wildlife Service proposes to determine a plant, *Callirhoe scabriuscula* (Texas poppy-mallow), to be an Endangered species under the authority contained in the Endangered Species Act. This plant occurs in Texas and is threatened by possible sand mining of its habitat. If this proposal is finalized, a determination of *Callirhoe scabriuscula* to be an Endangered species would implement the protection provided by the Endangered Species Act of 1973 as amended.

**DATES:** Comments from the public must be received by August 18, 1980. Comments from the Governor of Texas must be received by September 16, 1980.

**ADDRESSES:** Comments and materials concerning this proposal, preferably in triplicate, should be sent to the Director (FWS/OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials received will be available for public inspection during normal business hours at the Service's Office of Endangered Species, 1000 N. Glebe Road Fifth Floor, Arlington, Virginia 22201.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Spinks, Chief—Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 703/235-2771.

**SUPPLEMENTARY INFORMATION:**

*Callirhoe scabriuscula* (Texas poppy-mallow) was first collected by Dr. Sutton Hayes in the late 1800's on the Colorado River of Texas. This member of the mallow family is an erect, simple or basally branched perennial herb which averages 2 to 4 feet in height. The five wine-purple petals form an erect partially open cup about 1½ inches in diameter, with a dark maroon red inside center ring. *Callirhoe scabriuscula* occurs in the rolling plains vegetation of Texas (Gould 1975). It is limited in distribution to a small area of deep sandy soil blown from alluvial deposits along the Colorado River; this soil type is highly susceptible to wind erosion

(Wiedenfeld *et al* 1970). The continued existence of this plant and the fragile habitat in which it occurs are being threatened by sand mining, grazing, and other factors. This rule proposes to determine *Callirhoe scabriuscula* to be Endangered which would implement the protection provided by the Endangered Species Act as amended. The following paragraphs further discuss the actions to date involving this plant, the threats to the plant, and effects of the proposed action.

**Background**

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the *Federal Register* (40 FR 27823-27924) of his acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rulemaking in the *Federal Register* (41 FR 24523-24572) to determine approximately 1,700 vascular plant species to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975 *Federal Register* publication. *Callirhoe scabriuscula* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments on the 1976 proposal were summarized in an April 26, 1978, *Federal Register* publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909-17916).

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice withdrawing the June 16, 1976, proposal along with four other proposals which had expired. At this time the Service has sufficient new information to warrant reproposing *Callirhoe scabriuscula*.

In the June 24, 1977, *Federal Register* (42 FR 32373-32381), the Service published a final rulemaking under 50 CFR 17 detailing the regulations to protect Endangered and Threatened plant species. The rulemaking

established prohibitions and a permit procedure to grant exceptions, under certain circumstances, to the prohibitions.

The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

**Summary of Factors Affecting the Species**

Section 4(a) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) states that the Secretary of Interior shall determine whether any species is an Endangered species or a Threatened species due to one or more of the five factors described in Section 4(a) of the Act. These factors and their application to *Callirhoe scabriuscula* Robins. (Texas poppy-mallow) are as follows (Amos, 1979):

*Callirhoe scabriuscula*

1. *Present or threatened destruction, modification, or curtailment of its habitat or range.* Much of the natural habitat of *Callirhoe scabriuscula* has been disturbed. The range is limited to one Texas county; much of this is no longer suitable habitat for the plant. The actual area covered by the plant is very small. The range is dissected by a four-lane divided highway (U.S. Highway 67) and two frontage roads. All of the land on which the plants now occur is in private ownership. Cultivation, establishment of rural residences, and development of roads and a railway have reduced the range and the size of the populations. An imminent threat to all existing populations is commercial sand mining within the plant's habitat (Amos, 1979).

2. *Overutilization for commercial, sporting, scientific or educational purposes.* If exact localities were published, the plant's conspicuous and showy blooms could cause it to be threatened by amateur gardeners, wildflower enthusiasts and commercial horticultural collecting. Since all the populations occur on privately owned land, taking of these attractive plants could not be prohibited.

3. *Disease or predation* (including grazing). Numbers of individuals in areas under grazing pressure observed during the past three seasons have been steadily declining and there has been a marked reduction in plant vigor. The erect habit and the single main stem of the plant make it particularly susceptible to trampling by grazing animals. This is further impacted by the short flowering and fruiting period of the species; the plants do not recover in time to produce seeds in that season.

4. *The inadequacy of existing regulatory mechanisms.* The taxon is not protected under any current Texas state law. The endangered Species Act would offer needed protection for the species.

5. *Other natural or man-made factors affecting its continued existence.* Restriction to a very specialized and localized soil type and total range which is geographically limited to a small area tend to intensify any adverse effects occurring in the habitat of this plant.

#### Critical Habitat

Section 4(a)(1) of the Endangered Species Act provides in part that:

At the time any such regulation (to determine whether a species is Endangered or Threatened) is proposed, the Secretary shall by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat.

*Callirhoe scabriuscula* is threatened by taking, an activity not prohibited by the Endangered Species Act of 1973 with respect to plants. Publication of Critical Habitat maps would make this species more vulnerable. After recovery and protection plans have been developed for this plant, Critical Habitat may be beneficial and may be proposed in the future. Therefore, it would not be prudent to determine Critical Habitat at this time.

#### Effects of This Proposal if Published as a Final Rule

In addition to the effects discussed above, the effects of this proposal if published as a final rule would include, but would not necessarily be limited to, those mentioned below.

The Act and implementing regulations published in the June 24, 1977, *Federal Register* set forth a series of general prohibitions and exceptions which apply to all Endangered plant species. All of those prohibitions and exceptions also apply to any Threatened species, excluding seeds of cultivated plants treated as Threatened, unless a special rule pertaining to that Threatened species has been published and indicates otherwise. The regulations referred to above, which pertain to Endangered and Threatened plants, are found at Sections 17.61 and 17.71, of 50 CFR and are summarized below.

With respect to *Callirhoe scabriuscula* all prohibitions of Section 9(a)(2) of the Act, as implemented by Section 17.61 would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a

commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances. International and interstate commercial trade in *Callirhoe scabriuscula* do not exist. It is anticipated that few permits involving plants of wild origin would ever be issued. Since this plant is not common in the wild or in cultivation, additional paperwork for the public under Section 9 of the Act would be minimal.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species which is listed as Endangered or Threatened. Provisions for Interagency Cooperation implementing Section 7 are codified at 50 CFR Part 402. If published as a final rule this proposal would require Federal agencies to insure that activities they authorize, fund or carry out, are not likely to jeopardize the continued existence of *Callirhoe scabriuscula*.

The known populations of *Callirhoe scabriuscula* occur on privately owned lands. Maintenance of road beds and rights-of-way is the only type of Federal involvement presently occurring in the area. Maintaining these rights-of-way in a manner compatible with the *Callirhoe* should only require minimal planning and a minimal commitment of manpower and resources. The Soil conservation Service Field Office in Ballinger, Tex. is aware of the significance and location of this plant. No permits are required for the sand mining and the SCS has no involvement in this activity. No other Federal involvement is foreseeable at this time.

#### National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined during regular business hours by appointment. A determination will be made prior to the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

#### Public Comments Solicited

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of any Endangered or Threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

1. Biological or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal;
2. Additional information concerning the range and distribution of this species.

Final promulgation of the regulations on *Callirhoe scabriuscula* will take into consideration the comments and any additional information received by the Director, and such communications may lead him to adopt a final regulation that differs from this proposal.

#### Authors

This proposal is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; 87 Stat. 884). The primary authors of this proposed rule are Mr. Tom Strekal and Ms. E. LaVerne Smith, Washington Office of Endangered Species (703/235-1975).

#### Literature Cited

- Amos, B. 1979. Determination of *Callirhoe scabriuscula* Robins. as an Endangered species. Prepared for U.S. Fish and Wildlife Service. October 31, 1979.
- Gould, F. S. 1975. Texas plants, a checklist and ecological summary. College Station, Texas: Texas A&M University System, The Texas Agricultural Experiment Station.
- Wiedenfeld, C. C., L. J. Barnhill, and C. J. Novosad. 1970. Soil survey of Runnels County, Texas. Washington, D.C.: Soil Conservation Service.

#### Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below.

1. It is proposed to amend § 17.12 by adding, in alphabetical order, the following to the list of plants:

## § 17.12 Endangered and threatened plants.

| Species                             |                    | Historic range    | Status | When listed | Critical habitat | Special rules |
|-------------------------------------|--------------------|-------------------|--------|-------------|------------------|---------------|
| Scientific name                     | Common name        |                   |        |             |                  |               |
| Malvaceae, Mallow Family:           |                    |                   |        |             |                  |               |
| <i>Callirhoe scaberrimula</i> ..... | Texas poppy-mallow | USA (Texas) ..... | E      | N/A         | N/A              | N/A           |

Dated: June 7, 1980.

Lynn A. Greenwalt,  
Director, Fish and Wildlife Service.

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